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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>January 9, 2009</u></p> <p>Signature <u><i>H Malina</i></u></p> <p>Typed or printed name <u>Halina MALINA</u></p>		Application Number	
		09/936,793	
		Filed	
		3/23/1999FR	
First Named Inventor		Art Unit	
Halina MALINA		1655	
Examiner		Roy Teller	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided. <i>2 pages</i></p> <p>I am the</p> <p><input checked="" type="checkbox"/> applicant/inventor.</p> <p><input checked="" type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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January 9, 2009

Commissioner for Patents  
USA Patent Office

My patent application 09/936,793 was deposited in USA on the PCT law with the priority 23 Mars 1999 in France.

My application nr 09/936, 793 concerns "Protein modified by xanthurenic acid" this short title was proposed by PCT office instead of the original title Fr 99 03791 from March 23.1999

"Preparation of drugs on the basis of immune response against accumulation of the proteins modified by xanthurenic acid".

Claims concerns clearly induction of immune response by the covalently (means, stably and irreversibly) modified proteins.

My patent application concerns the antibody production against the protein modified by xanthurenic acid. My patent concerns only the xanthurenic acid bounded **covalently** to the proteins, or peptides (not the non-covalent conjugate described by Kobayashi et al., but the covalent conjugates.) Only the covalently modified proteins, are covered by the patent, because only the covalently modified proteins can be used to induce an immune response, otherwise, they could be applied for antibody production against the modified proteins (Claims 1).

This was correctly referenced by Supervisory Patent Examiner, Cecilia J Tsang at 8/09/06 that my publication Malina, BBRC, 1999, vol. 265, no.2, pp 600-605, is the first art (my publication after patent application).

I have explained, in my response for the review of Cecilia J Tsang, that my application of the patent in France at March 23, 1999 preceded my publication (in October 1999). The patent should be accepted after my response in 2006.

Unfortunately, in 2007 I obtained the letter that, this time, my patent is anticipated by

paper Kobayashi et al. (Chem. Pharm. Bult., 1980, vol.28, pp. 2960-2966). The paper clearly concerns the non-covalent interactions of xanthurenic acid with proteins (other USA patents were applied on the topic after my patent). After the arguments in my response in 2007, I obtained notice in August 2008 on final rejection because ""Xanthurenic acid is a natural metabolite circulating in the body and would necessarily react with cellular/tissue proteins". This statement is wrong. We could not live if it will be a true. We have many small molecules in our body. According to suggestion of the examiner the stylistic changes were made in the claims. On January 8, 2009 I obtained the patent rejection, because **new amendments were made** and they need a new consideration or searching.

This is totally wrong because there was any **new amendment** concerning claims or patent description.

**The claims of my patent** concern clearly an induction of the immune response; otherwise antibody production, otherwise utilization the xanthurenic acid-modified protein, peptide etc., which are antigenic (equivalent statements).

The changes proposed by the examiner are stylistic; otherwise the first version of patent PCT should be accepted.

Please contact me by email if you need any further explanation. I could not establish on the USPTO site if or how a fees should be paid with the pre-appeal. Then, please sent me a note if it is a case.

Best regards,

Halina Malina